

Minutes of the April 15, 2011 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Serio, Carmean, Bunting, Smallwood, Langan, Tingle and Weistling
Absent: None

President's Report

- Mayor Serio announced that her report was the Presentation of Ten-Year Service Award to Bryan Reed. Mayor Serio thanked Mr. Reed for his service and presented him with a \$100 US Savings Bond.

Topics for Discussion and Possible Action

- 1) Resolution #51-2011 Amend Personnel Policy Manual Outside Employment – Fenwick Island Police Department

Motion to approve change – Council Member Carmean

Second – Council Member Smallwood

DISCUSSION

Mayor Serio advised that the revision has been under discussion for a few months and that this final revision has been reviewed by Council, by the Chief of Police and the Town Solicitor. In addition, it has been posted for comment as required.

VOTE: (7-0)

Motion to approve Resolution #51-2011 passed.

- 2) Mobi Mats

Motion to proceed with the purchase of Mobi Mats under the terms and conditions of the March 18, 2011 letter to Town Manager Abbott from the Delaware Division of Parks and Recreation, purchase amount not to exceed \$40,308.000 and \$20,000 of that amount will be paid by a State grant – Council Member Langan

Second – Council Member Tingle

DISCUSSION

Council Member Langan advised that Council Member Weistling and Town Manager Abbott have analyzed and measured the dunes. The Town could purchase approximately 508 linear feet (~\$79 per linear foot) that would be sufficient for three (3) dune crossings with some mat left over. Council Member Weistling explained that a Mobi Mat is a fabric that is placed over the dune crosswalk to make it easier to walk across. Mr. Weistling advised that his original thought was to purchase sufficient material for one mat but does not want to lose the grant funds for more material.

Council Member Smallwood expressed his preference for one mat as a test of how they work under our conditions as well as the maintenance required. He noted that not all streets get the same use and so using more than one mat will not result in a reliable comparison. Council Member Weistling believes that three (3) streets will allow for three (3) different possibilities on as many different types of streets. Council Member Tingle noted that, should the Town refuse the grant at this time, the Town will move lower on the list of candidates for later grant considerations. She has used crossovers with the mat and likes the ease of walking on them. Council Member Smallwood suggested using a part of the grant to fund one street. Mayor Serio advised that the mats are proven to work and the question is how the Town can use them effectively; more than one mat should be installed in order to determine ease of use, maintenance, etc.

Council Member Carmean agreed with Mr. Smallwood and expressed concern with the approach to the purchase. Mrs. Carmean noted that the public may not have had an opportunity previously to comment on the mats and that she believes that Town Council should approve all grant applications before being sent off; Council Member Tingle disagreed. Council Member Carmean advised that the mats are not in the Capital Budget and asked if there is a comparable American product.

Council Member Bunting is in favor of the motion noting that the US military uses them in the desert for landing helicopters and that they would hold up under normal beach conditions. They are an aid for people who experience difficulty traversing the dunes. Mayor Serio advised that the first meeting in October 2010 was a

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presentation by the vendor and no purchase decision was made. The mats have been discussed in Council meetings and Mr. Abbott explored funding on behalf of the Council. This is the first time a motion regarding the mats has been placed before Council.

PUBLIC COMMENT

Mary Pat Kyle (1205 Bunting Ave) – asked what holds the mat down and how to keep them from getting covered with sand. Council Member Tingle advised that they are anchored with hooks and that the sand needs to be swept off when they get covered. Mayor Serio noted that Public Works can maintain the mats in the event of a storm. Council Member Weistling noted that he discussed this at the September 24, 2011 Council meeting and that DNREC has asked its lifeguards to be responsible for sweeping the mats.

Buzz Henifin (48 Windward Way) – asked what is the requirement to spend tax and grant funds when the Town cannot purchase more than three (3) mats. Council Member Tingle and Mayor Serio advised that several people in town have asked for them and that it makes it easier to transverse the steep, sandy dunes more safely.

Mr. Henifin noted that the last beach replenishment effort resulted in “hard” sand being used on the dune crossings that is still in place in some areas. He asked what percent of homes are in favor of purchasing the mats. He asked if the Lifeguard Captain is aware of the added duty for the guards. Mayor Serio advised that the towns etc who have installed the mats are well-satisfied and that Captain Ferry is aware of the added duty.

Mike Quinn (5 W Houston) – asked if Council knew how much time is required to remove the mats in the event of a storm and if the town has someplace to store them. Mayor Serio advised that she does not know how long it will take to remove them but that, in the event of a storm, the mats will be moved to a safe location and ultimately stored in the Public Works facility. Buzz Henifin asked if Council knows how much they weight; Dan Heller, Public Works Supervisor, advised that two (2) people can handle one roll.

Jo Coyle (19 W So Carolina St) – is in favor of the mats and thinks that there are many others who have difficulty crossing the dunes who are/will be in favor of them. Mayor Serio said that the mats give added traction; Council Member Weistling advised that they are mobile and can be moved to another street if needed.

Peter Frederick (1605 Bunting Ave) – asked if the vendor provided a history of needed maintenance; Council Member Weistling advised that none is needed. Council Member Tingle added that they have been used in Hilton Head for ten (10) years. Mr. Frederick asked if the town has considered all costs before purchasing the mats; Council Member Weistling advised that this is a preliminary purchase in order to test all aspects of the product. Mayor Serio added that, depending on the results, the town might consider mats for the remaining streets in the future.

Buzz Henifin (48 Windward Way) – noted that the Council will need to figure maintenance into future budgets; Mayor Serio agreed that, if the town is pleased with the results, it will become a part of the budget. In response to a question from Mr. Henifin, Council Member Weistling advised that the average length for a crossing is @150 feet. Council Member Smallwood estimated that 150 feet would cost \$11,846 without grant funds.

Town Manager Abbott noted that he pursued that grant opportunity as it presented itself and that Council may choose or not to accept the grant. South Bethany has filed a maintenance plan for their mats with DNREC that includes sweeping during the season and power washing at the end of the season. The Town of Fenwick Island already owns a power washer and the Public Works staff will do the work as part of their regular duties. The purchase of the Mobi Mats will not add to Town expenses except for the cost to purchase them. Mr. Abbott advised that funds in the Operating Budget consist of taxes collected by the Town; funds in the Capital Budget have resulted from the last 15-20 years of Realty Transfer Tax being invested by the Town. The purchase of the Mobi Mats will be from Capital Budget and will not add to the property tax bill. Mike Quinn (5 W Houston St) asked if the town will put depreciation of the mats into the budget; Town Manager Abbott advised that it will not.

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VOTE: (5-2)

Motion to proceed with the purchase of Mobi Mats under the terms and conditions of the March 18, 2011 letter to Town Manager Abbott from the Delaware Division of Parks and Recreation, purchase amount not to exceed \$40,308.000 and \$20,000 of that amount will be paid by a State grant passed with Council Members Carmean and Smallwood voting 'No.'

Approval of Minutes:

Motion to Approve the Minutes of March 25, 2011 Meeting - Council Member Bunting

Second: Council Member Langan

DISCUSSION – None

Vote: (5-0-1)

Minutes approved with Council Member Tingle abstaining as she was not present at the meeting.

Treasurer's Report:

Council Member Bunting advised that the Town is expecting to receive Transfer Realty Tax funds soon. A Budget Committee meeting will be held in May to consider the Capital Budget.

Vote: All in favor to accept the Treasurer's Report (7-0)

Treasurer's Report accepted.

Town Manager Report:

- Mr. Abbott reported that the Town has signed a contract with the State of Delaware for lifeguard coverage, with Chesapeake Waste for trash collection and with Blue Hen Disposal for yard waste collection. Yard waste will be collected beginning April 21, 2011 and continuing every third Thursday until November.
- Georgetown Street has been surveyed after a ponding problem. It will be corrected.
- Regarding waste disposal, the schedule is posted on line as well as the standards for bundling, etc. Council Member Bunting asked that the trash/recycle/yard waste calendar be included in all Parking Permit packets and Mayor Serio asked that it be made available for realtors.

Department Reports:

- Building Official – Report included in meeting packet. Mrs. Schuchman advised that she attended a FEMA workshop in March 2011 regarding recent flood map studies west of the beach. These changes do not affect the beach area; revisions for this area will be available in approximately two years.
- Public Works - Report included in meeting packet. Town Manager Abbott advised that the department is painting and carrying out other activities to prepare for the summer.
- Police Department - Report included in meeting packet. Nothing more to add.

Committee Reports:

- Beach Committee – No report
- Environmental Committee – Council Member Carmean advised that Buzz Henifin has arranged for a Geothermal Energy Workshop on May 26, 2011 at 2PM. The Committee has scheduled a Solar Energy Workshop for Saturday, June 18 and a MERR Presentation for Saturday, July 9.
 - Anyone interested in learning to surf fish should contact John Belian
 - The Committee is drafting a resolution to be sent to DNREC asking for a better process of information dissemination and public input when considering approval of sub-aqueous applications in the Little Assawoman Bay watershed area. The Committee would like the Town to be more active in the future in addressing these applications. Mayor Serio advised that drafting a committee statement is acceptable but not a council resolution. The Committee needs a plan of attack for the next time and the Town's Comprehensive Land Use Plan allows the Town to have a say.
- Public Safety Building – Council Member Langan advised that an invitation to bid was published on April 14, 2011. A Pre-bid meeting is scheduled for April 21 and bids are due on May 24. The Town has had five requests for information so far.

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Planning Commission: No report

Charter & Ordinance

- Proposed First Reading Chapter 160-5A Zoning (Use Regulations) Auction Houses – Council Member Weistling
Council Member Weistling asked that the Proposed First Reading be included in these minutes.

Motion to accept First Reading Chapter 160-5A Zoning (Use Regulations) Auction Houses – Council Member Weistling

Second – Council Member Langan

DISCUSSION

Council Member Weistling advised that the Town has had a request to allow an auction house to operate in town and to return it to the Town Ordinance as an allowable use. The Charter and Ordinance Committee, at Council's direction and after review by the Town's Solicitor, has drafted the change. This change will allow only professionally licensed auctioneers; regulate activity, registration and sales; allow for violations, relief, appeals and inspections.

Council Member Carmean noted that the committee has carefully defined what is allowed; Council Member Smallwood asked if the auction will include real property and if livestock/animals are included. Council Member Weistling advised that activity is limited to inside the building only thus eliminating boats, etc. Council Member Smallwood expressed concern that the ordinance is still open to the auctioning of animals. Mr. Weistling suggested that Council proceed with the ordinance change as presented and address animals later if it becomes a problem.

Vote: (7-0)

Motion to accept First Reading Chapter 160-5A Zoning (Use Regulations) Auction Houses passed.

Old Business - None

New Business – No Action to be Taken

A flyer is included in the meeting packet for the Bethany Beach Volunteer Fire Company EMS Day on May 14, 2011. There is an open house from 10-2 and all are encouraged to attend.

Public Participation:

- Lynn Andrews (1205 Schulz Rd) – asked if police officers wear their FIPD uniforms when working for other towns or use Town vehicles; Mayor Serio said no. Council Member Carmean advised that the FIPD Off-duty policy was in two parts. There is a departmental directive regulating extra duty while in town and the Personnel Policy change regulates work outside of town and outside employment neither of which requires the use of Town equipment.
- Lynn Andrews continued – by asking about the Chapter 160 Zoning change regarding farmers markets advising that she does not want anything in this change to interfere with her enjoyment of her home and the beach. When asked if the ordinance will allow barbeque vendors, Council Member Weistling responded "no."

Upcoming Events and Meetings:

- Mayor Serio announced all meetings and events.

Motion to Adjourn: Council Member Bunting

Second: Council Member Langan

All in favor to adjourn (7-0)

Mayor Serio adjourned the meeting at 4:35PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk
For Diane Tingle, Secretary

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TOWN OF FENWICK ISLAND PERSONNEL POLICIES

AMEND PERSONNEL POLICY MANUAL Council Resolution #51-2011

1. Add to General Provisions the following as it relates to the Fenwick Island Police Department:
 - q) "Outside Employment" (Fenwick Island Police Department) means any employment that is outside the officer's regular duty shift for the Fenwick Island Police Department.
 - r) "Probationary Status" (Fenwick Island Police Department) means the first twelve months of an officer's employment or any time period established due to an officer's disciplinary status.
2. Add Section 4-8.1 Outside Employment – Fenwick Island Police Department as follows:

A. Policy

Guidelines for the members of the Fenwick Island Police Department to follow when working any outside employment in or out of the Town limits are set forth below:

- 1) Outside employment is not permitted unless the Chief of Police has issued official approval after reviewing the written request;
- 2) If the outside employment involves potential or actual law enforcement duties, no issued Fenwick Island Police Department equipment is to be worn or used by that officer;
- 3) Outside employment shall not reflect negatively on the officer's reputation or that of the Fenwick Island Police Department;
- 4) Any full time member of the Fenwick Island Police Department whose employment duty status is temporarily part time for any official reason is not permitted to engage in outside employment;
- 5) The outside employment shall not be allowed to interfere with the officer's full time responsibilities to the Fenwick Island Police Department.

B. Definitions

1) *Outside Employment:* Any employment that is outside the officer's regular duty shift for the Fenwick Island Police Department.

2) *Probationary Status:* The first twelve months of an officer's Fenwick Island Police Department employment or any time period established due to an officer's disciplinary status.

C. Procedures

- 1) It will be the responsibility of any officer seeking to engage in outside employment to provide a written request to the Chief of Police. Any such request must be submitted in

advance of the proposed outside employment and shall provide a detailed description of the proposed outside employment.

- 2) After reviewing the officer's written request to pursue outside employment, the Chief of Police will determine whether to approve or disapprove the request.
- 3) No officer on probationary status shall be permitted to engage in any type of outside employment.
- 4) It shall be the responsibility of the Chief of Police or his/her designee to oversee adherence to the above policy, application process, or any other matters that may arise or be brought to the Chief's attention as a result of the outside employment of any department members.

D. Conflicts

In the event of any conflict between the provisions set forth herein the Secondary Employment policy, extra-duty pay job policy, or other applicable policy for the Fenwick Island Police Department, the provisions of the applicable Fenwick Island Police Department Policy shall control.

Attest: _____
Agnes DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Secretary of Council

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the President and Council at a meeting on April 15, 2011, at which a quorum was present and voting throughout and the same is still in force and effect.

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Approved First Reading – April 15, 2011

Proposed Second Reading – May 20, 2011

Chapter 160 – Zoning

Chapter 160-5 A (Use Regulations):

Add:

(61) Auctions

a) Definitions:

(1) Auction House. Any premises within the Commercial Zone where personal or real property is sold by auction to the highest bidder by a Professional Auctioneer.

(2) Professional Auctioneer. Every person engaged in the business of crying sales of real or personal property on behalf of other persons for profit. A Professional Auctioneer must be licensed as an auctioneer by the State of Delaware and the Town of Fenwick Island. All Professional Auctioneers must be insured to the extent required by the State of Delaware and Delaware law.

(3) Real Estate Auction. An auction whereat any real property within the Town of Fenwick Island is sold to the highest, qualified bidder. Real Estate Auctions must be conducted by a Professional Auctioneer and may be, but are not required to be, held on the real property being sold at auction.

b) Regulations for Auction Houses and Real Estate Auctions:

- (1) Auctions must adhere to all Federal and State laws and regulations.
- (2) All auctions must be conducted by a Professional Auctioneer licensed by the State of Delaware and the Town of Fenwick Island.
- (3) Any and all personal property being sold at auction must be stored and displayed inside the Auction House. No such personal property may be stored or displayed outside of the Auction House.
- (4) No signs or devices which produce noise or sound, or which emit visible smoke, vapor, particles or odor shall be used for advertising purposes or to attract attention.
- (5) A register of all buyers and sellers participating in an auction must be maintained at all times by the Professional Auctioneer responsible for conducting the auction. As part of said register, the Professional Auctioneer must also maintain an accurate list of all real and/or personal property bought and sold, together with a description of said real and/or personal property.
- (6) All auctions must be completed by 9:30 p.m.

c) A license issued by the Town of Fenwick Island to a Professional Auctioneer may be suspended and/or revoked for any violation of the Regulations for Auction Houses and Real Estate Auctions set forth above. Such a suspension and/or revocation may also occur for reasons that include, but are not limited, to the following:

- (1) Misleading or untruthful advertising.
- (2) Flagrant misrepresentation of the quality or existence of the personal or real property being sold at auction.
- (3) Knowingly using false bidders.

(4) Absent a good faith, bona fide dispute, failure to remit payment to the seller of any real or personal property sold at auction and/or failure to transfer any real or personal property sold at auction to the ultimate purchaser thereof.

d) Inspection of Auction Houses. Town officials shall have the power to inspect, during reasonable business hours, any Auction House for the purpose of determining compliance with this §160-5 (61) or any other applicable provision of the Town Code, as well as to determine compliance with State licensing or other regulatory requirements. During any such inspection, Town officials may secure and confiscate any evidence discovered that may be necessary for prosecution under this Chapter. Town officials may, but shall not be obligated to, refer any suspected criminal activity to the proper police authorities.

e) Violations and Penalties. Any person or entity in violation of this §160-5 (61) shall be obligated to pay a civil fine in the amount of \$500.00 for the first violation. Subsequent violations shall be punishable by a fine in such amount of \$1,000.00 per violation. Each day that a violation continues shall be deemed to be a separate and additional violation for purposes of the civil fine imposed hereby. Any appeal of the civil fine imposed shall be lodged with the Fenwick Island Town Council within ten (10) days of receipt of written notice from the Town that the civil fine has been imposed. In the event of an appeal, the appealing party shall be given an opportunity to be heard and to present his case for rescission or reduction of the civil fine before the Town Council. The decision of the Town Council following any such appeal shall be final. Any and all civil fines imposed hereby shall be collectible in the same manner as delinquent taxes and the Town shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection with any such collection effort.